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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0153**

In re the Guardianship and/or Conservatorship of:
Juliann E. Jaeger, Ward/Protected Person.

**Filed September 7, 2021
Affirmed
Frisch, Judge**

Wadena County District Court
File No. 80-PR-20-187

William J. Toulouse, Quarnstrom & Doering, P.A., Marshall, Minnesota (for appellant Juliann E. Jaeger)

Lillian N. Sackett, Paul A. Jeddelloh, Jeddelloh & Snyder, P.A., St. Cloud, Minnesota (for respondents Presbyterian Family Foundation and Wadena County Human Services)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion in appointing a conservator, or alternatively, failed to follow the statutory priority list in appointing a conservator. We affirm.

FACTS

Petition for Guardianship and Conservatorship

In March 2020, respondent Wadena County Human Services (the county) petitioned for the appointment of a guardian and conservator over appellant Juliann E. Jaeger and proposed the appointment of respondent Presbyterian Family Foundation, Inc. (PFF) to act as both guardian and conservator.

The county's petition provides:

[Jaeger] has psychiatric diagnoses of Generalized Anxiety Disorder ("GAD"), Personality Disorder and has multiple medical diagnoses including hypothyroidism, COPD, Diabetes, Diabetic Polyneuropathy and Hyperlipidemia which make her vulnerable and at risk for receiving the appropriate care. [Jaeger] is having significant impairment in regard to navigating her financial situation in regard to housing and appropriate care settings. The level of executive functioning required for such matters is more than she can handle despite superficial appearances that she can handle such matters. Her bills are going unpaid, she is not connected with her family and she has relied on banking personnel to help her in the past. She has no plan on how to deal with her complex financial situation and the handling of her bill paying and obtaining proper care. [Jaeger's] physicians have stated the need for a guardian to assist her in appropriate decision-making.

. . . .

[Jaeger] has a significant impairment in her ability to navigate her financial situation in regard to housing and appropriate care setting. . . . The level of executive functioning this is requiring is challenging for her and [Jaeger] is not taking care of her finances and bill paying even though it is believed she has the resources to pay. Currently she owes the facility where she is staying in excess of \$50,000 and part of that amount has been sent to a collection agency. [Jaeger] is very secretive about her finances and will not address any questions and refuses to address the issue of her bill with the facility. It

is believed she created a trust in the past where she has titled real estate and other assets and authority is need[ed] in a conservator to find her assets and manage them appropriately, including the possibility of becoming trustee of the trust, if found.

The county also included in its filings a statement from Jaeger's physician in support of the appointment of a guardian or conservator and describing Jaeger's need for assistance as "imperative." The physician explained that Jaeger's "psychiatric diagnosis and medical issues" placed her "in a vulnerable state" and had caused a "significant impairment in regard to navigating her financial situation." The county also included a letter from Jaeger's psychiatrist explaining that because of Jaeger's "vulnerability," it was "imperative" to Jaeger's "best interest and well-being to have someone who could assist her directly in navigating the decisions that need to be made."

The county also filed a 2012 power of attorney designating Gretchen Noon, Jaeger's youngest daughter, as Jaeger's attorney-in-fact, a 2012 health-care directive designating Noon as Jaeger's health-care agent, and a 2017 trust for the benefit of Jaeger listing Jaeger and Noon as co-trustees.

A March 22, 2020 letter authored by Noon was also filed in support of the petition. Noon explained that Jaeger's mental state had been deteriorating following a 2017 diagnosis of pre-dementia and that Jaeger experienced multiple evictions following that diagnosis. Jaeger eventually moved into Fair Oaks Lodge, paying between \$8,000 and \$10,000 a month "out of pocket," which Noon stated Jaeger could "no longer afford." Noon explained that for over 20 years, she had attempted to assist Jaeger with her "finances and affairs" and described that task as "difficult at times since [Jaeger] is very

uncooperative, controlling, and secretive.” Noon wrote that Jaeger was in “severe debt,” but “refuse[d] to allow proper handling of her finances.” Noon also wrote that Jaeger had “been taken advantage of by many ‘scams’” despite police intervention. Noon wrote that she wished to be appointed conservator but that she wanted someone else appointed guardian “due to [Jaeger’s] on-going verbal abuse.”

Assessment by Visitor

The district court appointed a visitor, who recommended that a guardian and conservator be appointed, in part to “search for [Jaeger’s] assets and help her manage them.” The visitor reported that Jaeger believed she was “capable of doing everything herself,” but that in light of Jaeger’s “most recent psychiatric diagnosis,” her “significant medical issues that require daily oversight and assistance,” and “her verbal ramblings during [their] conversation, it appear[ed] [Jaeger] suffered from enough mental impairment to affect her ability to handle her finances or safely care for herself.”

The visitor also reported that Jaeger did not seem to understand the consequences of her actions on her well-being and several incidents of Jaeger being confused.

Vulnerable-Adult Maltreatment Report

On June 26, 2020, Fair Oaks Lodge completed a vulnerable-adult maltreatment report due to Jaeger’s outstanding balance exceeding \$100,000 with the facility for room and board, medications, oxygen, and other necessary expenses. The facility explained that it had taken over payments for Jaeger’s oxygen and medications “to ensure her safety” because Jaeger claimed to lack funds. The facility stated that it would not continue to pay these expenses because Jaeger had “the financial abilit[y] to pay for [her medical expenses]

privately.” The facility noted that Jaeger was a “private pay” resident due to the “assets and income she continue[d] to hold/receive,” including monthly pension payments and Social Security income. The facility expressed concern that without “a guardian in place to ensure her safety,” Jaeger might refuse to pay for or participate in necessary medical interventions.

Fair Oaks Lodge described Jaeger’s “health, well-being, and place of shelter” as “at risk” and explained that Jaeger would be unable to secure alternative housing until her outstanding balance with the facility was paid. The facility stated a belief that the sale of Jaeger’s lake home could at least partially cover the outstanding balance with the facility. Fair Oaks Lodge also explained that it had “attempted to work” with Noon, as Jaeger’s attorney-in-fact, but that Noon had been unsuccessful in managing Jaeger’s affairs “due to [Jaeger] not wanting anyone involved.” The facility recommended that “a non-family member [be] appointed as guardian.”

Hearing on the Petition

In September 2020, the district court held a hearing on the county’s petition.

As to the outstanding balance with Fair Oaks Lodge, the district court received conflicting witness testimony. Jaeger conceded that she had accrued an approximately \$111,000 outstanding balance with the facility for necessities and that she had refused to pay this bill for some time due to a dispute with her long-term-care insurance.¹ Jaeger further admitted that she was sued for the outstanding balance, but claimed that she had

¹ Jaeger testified that she no longer qualified for her long-term-care insurance due to her age and denied losing coverage for failure to pay the premiums.

since settled the matter and paid the balance in full. Jaeger testified inconsistently about the amounts and dates of her alleged payments to the facility. Noon testified that, at the request of Jaeger, she had mailed an initial payment to Fair Oaks Lodge and that she believed Jaeger still owed the facility approximately \$58,000. Melissa Hoffman, nursing home administrator at Fair Oaks Lodge, testified that Jaeger had made a single payment of \$22,063 prior to the hearing and that she believed Jaeger then-currently owed the facility \$89,423. Hoffman further testified that she understood that Jaeger had an additional check written out to the facility for \$33,000 but that Jaeger “never actually gave it to the facility.”

As to her necessary medical treatment, Jaeger admitted to having several medical diagnoses and to refusing to pay for her medications once she “found out that [she] was not getting paid by long-term care” insurance. Hoffman explained that Jaeger would often refuse to take her medications after reviewing a medical bill and that the facility had to “take on the bill so that [Jaeger] could continue getting her medications at the facility.” Hoffman also testified that she “had to intervene on a couple [of] different occasions” to prevent the oxygen company from collecting Jaeger’s necessary medical equipment and supplies for nonpayment. This medical equipment included a continuous positive airway pressure machine necessary to keep Jaeger alive when she would otherwise stop breathing in her sleep and oxygen which Jaeger needed for “ambulating long distances, for helping [to] keep her anxiety more level, [and] for breathing at night.” Jaeger testified that she had believed she was paying for her oxygen and asserted that Fair Oaks Lodge staff had been “very vague about many, many things” and never told her that she was not paying for her oxygen.

The district court also received evidence regarding Jaeger's extensive real property interests. Jaeger testified that she owns a 200-acre farm in Sibley County with a vacant house in "livable" condition in which Jaeger stores personal property and pays for electricity and security. Jaeger also testified that she rents the land out to family at \$50 per acre, although market rent in that area is \$300 per acre. Noon stated that she could not attest to the current condition of the property because she had not been there for "at least ten to fifteen years."

Jaeger testified that she also owns 80 acres of virgin timber out-of-state for which she pays real estate taxes and does not rent out. Noon testified that she had never visited the property.

Jaeger stated that she owns another unoccupied home, where she keeps her personal belongings, in addition to two lots and an unoccupied trailer home in need of repair in Cottonwood. Jaeger testified that she continues to pay for electricity and insurance on these properties. Noon testified that she had not visited the Cottonwood properties for at least 10-15 years.

Jaeger also testified that she owns two lake cabins on Lake Miltona that she does not rent out and which are available to her family for their use and enjoyment. Jaeger stated that she pays for electricity, insurance, and heat for the cabins.

Additionally, Jaeger testified that she owns a property she referred to as "the Pizza Ranch," although the property had not been franchised as such for many years. Jaeger stated that the property had been vacant for approximately seven years and was used to store personal items and restaurant equipment.

Noon testified that Jaeger had an issue with hoarding and that, although Noon had “not been inside any of [Jaeger’s] properties for years,” she believed some were full of personal property. Despite storing personal property in numerous homes, Noon testified that Jaeger also rents storage facilities, although Noon did not know where the facilities were located or the contents of any unit.

Noon testified that she had realtor friends who were willing to prepare some of the properties for rent, but she conceded that she had not investigated what steps would need to be taken to obtain the best sale price for any of Jaeger’s properties. Noon further conceded that she had not conducted any investigation into the salability of the properties, their condition, or the relevant markets.

Jaeger also testified to owning several inoperable vehicles stored at various locations. Noon testified that she believed that Jaeger stored one or two vehicles at the farm, but Noon conceded that she was unsure of the total number of vehicles because she had not been on the property for “several years.” Although Jaeger claimed to have a valid driver’s license, Noon testified that was untrue and that Jaeger had “received a letter from the State stating that she was unable to drive.” Hoffman testified about an incident where Jaeger attempted to have one of her vehicles jumpstarted after having been parked in the only handicap parking spot at the facility for over a year. Police informed Hoffman that Jaeger did not have a valid driver’s license, vehicle insurance, or current tabs. When Jaeger was asked what she intended to do with her vehicles, she stated that “a man out in the country that [Jaeger] used to know” wanted the vehicles. Noon testified that she had not discussed a plan for the vehicles with Jaeger.

Although Jaeger testified that staff at Fair Oaks Lodge assisted her with paying bills on a single occasion, Hoffman explained that staff frequently assisted Jaeger with paying bills, although it is not a service generally provided by the facility. Hoffman explained that Jaeger “would often have a list of the bills that she would want [facility staff] to pay,” which included landscaping and electricity bills for various properties, time-share membership fees, a “washer and dryer and various expenses” for a man that lived in Texas, and “an instance of paying [Noon] some money.” Hoffman explained that despite staff encouragement, Jaeger “never wanted to pay the facility room and board fees, and she also did not want to pay the oxygen . . . [and] medication fees so she would bypass those bills and decide to have [staff] write [out checks for] all these other bills.”

Jaeger stated that she had given money to a former Pizza Ranch employee because she saw it as her “Christian duty for a person who’s needing money.” Hoffman testified that staff had reported those payments as possible elder abuse. Noon testified that the former employee scammed Jaeger into sending him money for quite a while.

Jaeger testified that she had already designated Noon to make financial decisions on her behalf if necessary and that if a conservator was to be appointed, she wanted Noon to fill that role. Jaeger stated that she could handle her own finances, but “if that person is willing to check with me about my initial doings, we have to get to the bottom of the things and not just let it fly so to speak, yes, then I need somebody.”

Noon conceded that she had not been managing the trust assets or financial affairs as of the date of the hearing and claimed that, although she was co-trustee of Jaeger’s trust, she lacked an ability to act in that capacity due to Jaeger’s “ability to maintain things

herself.” Noon testified that she is also Jaeger’s attorney-in-fact, but stated that she had only used that authority to pay one bill in recent years and that historically her authority had been “[v]ery limited to maybe write out a couple of bills” because she needed Jaeger’s permission to act.

Noon testified that she wanted to act as Jaeger’s conservator so she could “legally” handle Jaeger’s finances without having to get Jaeger’s permission, but did not want to be appointed guardian because Jaeger sometimes “manipulates” and does not listen to Noon. Noon explained that in the past Jaeger had threatened to call the police on Noon and on one occasion actually did call the police. When pressed to explain why Noon did not have the same concerns about serving as conservator as she did about serving as guardian where both would give her legal authority to act on Jaeger’s behalf, Noon responded that she did not want to act as guardian because of Jaeger’s past behavior, including difficulties in obtaining Jaeger’s cooperation when Noon would attempt to obtain Jaeger proper housing. Noon explained that she believed a non-relative would be “able to get those things done better.”

Noon also testified that her personal medical condition interfered with her management of Jaeger’s affairs. Noon testified that before her personal medical diagnosis, she had assisted Jaeger with her financial affairs “much more frequently,” but that after her diagnosis, she “backed away” from managing her mother’s affairs and went so far as to block Jaeger’s telephone number. Noon conceded that she had no contact with Jaeger for over two years and only resumed contact recently. Noon also testified that Jaeger is in significant debt, but admitted to lacking any specific information.

Social worker Cheryl Genoch expressed her opinion that “a guardian and conservator outside the family would be a better fit at this time” to allow them “time to get [Jaeger’s] affairs in order” and because “family is personal.” Genoch explained that the complexity required to arrange Jaeger’s affairs might be too much for a family member to handle and recommended the appointment of PFF as guardian and conservator.

Shirley Olson testified on behalf of PFF that it would not accept a split appointment due to the complexity of the case and past issues with split appointments.

The district court issued an order appointing PFF as guardian and conservator. Jaeger appeals.

DECISION

I. The district court did not abuse its discretion in appointing a conservator.

The appointment of a conservator is governed by Minn. Stat. § 524.5-401 (2020), which provides, in pertinent part, that a district court may appoint a conservator if it determines “by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance” and

by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual’s support and that protection is necessary or desirable to obtain or provide money.

In appointing a conservator, a district court must also find that the individual's "identified needs cannot be met by less restrictive means" and "must make specific findings particular to the respondent why less restrictive alternatives do not work." Minn. Stat. § 524.5-409, subd. 1(3) (2020).

"The appointment of a conservator is a matter within the district court's discretion and will not be disturbed absent a clear abuse of that discretion." *In re Guardianship of Pates*, 823 N.W.2d 881, 885 (Minn. App. 2012) (quotation omitted). We will only set aside a district court's factual findings if they are clearly erroneous and we are left "with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

Jaeger argues that the district court abused its discretion in appointing a conservator because it "ignored" the less-restrictive alternatives available, specifically the delegation of Noon as attorney-in-fact and co-trustee. Jaeger asserts that Noon, as attorney-in-fact, can exercise "[a]ny and all powers authorized under the conservatorship statute."

We have carefully reviewed the findings by the district court. The district court specifically recognized the less-restrictive options proposed by Jaeger and issued detailed findings explaining why those less-restrictive options were insufficient alternatives to the appointment of a conservator. The district court found, by clear and convincing evidence, that Jaeger was unable to manage her property and business affairs because of an impairment in her ability to receive and evaluate information or make decisions. By way of example and not limitation, the district court found that Jaeger consistently failed to pay

her Fair Oaks Lodge nursing home bill²; Jaeger lost property in Colorado to avoid facing a condemnation proceeding; and Jaeger took no action to manage any of her properties with the exception of renting out farmland at a below-market rate. The district court specifically found that the power of attorney, health-care directive, and trust agreement in place “had not prevented any of the issues.”

The district court then found, by a preponderance of the evidence, that Jaeger has property that will be wasted or dissipated in the absence of appropriate management. The district court cited Jaeger’s own testimony that a “large slate” of her properties generated expenses but no income or income at a below-market rate. The district court also found that the absence of active management of any of Jaeger’s properties has resulted in “a significant state of disrepair” and “risk of significant deterioration.” The district court found that some of Jaeger’s properties had not been managed in more than a decade and that Jaeger’s numerous vehicles had not been driven or maintained for many years.

The district court also found that the less-restrictive means identified by Jaeger—the status quo—had proven insufficient to assist Jaeger. The district court found that Noon had taken no action to manage the trust property and had only used her attorney-in-fact authority to pay a single bill recently. The district court further reasoned that “[Noon] would be expected to perform similar duties” under the delegations of the trust, health-care

² The district court found Jaeger’s testimony regarding payment of the Fair Oaks Lodge bill to be inconsistent and therefore not credible, with one exception. A district court “is in the best position to evaluate witness credibility,” and we will not disturb those findings so long as they are supported by “reasonable evidence.” *Bobo v. State*, 860 N.W.2d 681, 684-85 (Minn. 2015).

directive, and power of attorney as would be required of her as guardian, and “Noon [had] repeatedly stated that she would not want to serve as guardian for [Jaeger], based on [Jaeger’s] contrariness and hostility.”

Based on these findings, which are well-supported by the record, the district court determined that the existing delegations to Noon were “not a viable” alternative to a conservatorship. *See Pates*, 823 N.W.2d at 887 (holding that the district court did not abuse its discretion by appointing a conservator where the district court found the power of attorney was not “an appropriate alternative to protect [the person subject to conservatorship’s] finances”). We discern no abuse of discretion by the district court in its appointment of a conservator upon finding that less-restrictive alternatives were insufficient to meet Jaeger’s needs.

II. The district court did not abuse its discretion in appointing a professional conservator.

Jaeger argues that the district court abused its discretion by appointing PFF as conservator in lieu of Noon in contravention of the statutory priority list. Minn. Stat. § 524.5-413(a) (2020) requires a district court to consider candidates for conservator in order of priority, with the adult child of a person subject to conservatorship having priority over a professional conservator. The statute also expressly provides that the district court may “decline to appoint a person having priority and appoint a person having a lower priority or no priority” if “acting in the best interest of the person subject to conservatorship.” Minn. Stat. § 524.5-413(c) (2020).

A district court does not abuse its discretion when it appoints the party it finds to be the “most qualified to serve as [c]onservator” and makes “specific findings” in support of its determination. *Pates*, 823 N.W.2d at 887. We will only set aside a district court’s factual findings if “they are clearly erroneous, giving due regard for the district court’s determinations regarding the credibility of witnesses.” *Id.* (quotation omitted). “A finding of fact is clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

In its order, the district court expressly acknowledged the statutory priority, considered whether Noon should be appointed as conservator, found that PFF was most qualified to act as conservator, and concluded that appointment of PFF as conservator was in the best interests of Jaeger.

As an initial matter, the district court “strongly believe[d]” that Jaeger needed a guardian. PFF was the sole candidate for guardian and would not agree to serve as guardian if another candidate acted as conservator. Faced with the choice of appointing Noon as conservator and leaving Jaeger without a guardian or appointing PFF as both guardian and conservator, the district court determined that Jaeger’s best interests were served by the appointment of PFF as both guardian and conservator. Although Jaeger argues that the district court placed an “unfounded emphasis” on PFF’s willingness to serve as guardian only if also appointed as conservator, our review shows that the district court considered the need for a guardian among other factors in determining Jaeger’s best interests. We discern no abuse of discretion by the district court in its best-interests determination.

Second, the district court determined that a professional conservator was best suited to meet Jaeger's needs because of her "extensive and complex estate, containing at least six properties in two states, numerous vehicles, and four households of surplus personal property," all of which "are in disuse and disrepair" and will require "an extensive team of cleaners, contractors, and real estate agents" for proper management. Although Noon "had done some very preliminary and informal investigation of the sale of [Jaeger's] property," she "had failed to hire or consult the necessary professionals." And the district court found that although Noon had the ability to take certain steps to manage Jaeger's estate for the past three years, she had failed to do so. We find no abuse of discretion in the district court's conclusion that appointment of a professional conservator was in Jaeger's best interests.

Third, the district court also expressed a lack of confidence in the sustainability of Noon as conservator due to the volatile history between Noon and Jaeger. The record supports this finding. Noon testified that she experienced such "significant difficulty and stress interacting with [Jaeger]" that Noon blocked Jaeger's phone number. Noon testified that "she had not had significant contact with [Jaeger] for the past two years." And the district court's order set forth the history of challenges Noon faced in attempting to assist Jaeger, including verbal abuse, threats of physical assault, and police intervention. We see no abuse of discretion in the district court's determination that a professional conservator was a more sustainable arrangement and in Jaeger's best interests.

Accordingly, the district court acted well within its discretion in making specific findings supported by the record to conclude that the appointment of a conservator with a lower priority was in the best interests of the person subject to conservatorship.

Affirmed.